

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,  
RICARDO GONZALES, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS LOCAL 38 HEALTH AND  
WELFARE FUND, INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 295-295C  
WELFARE FUND, AND STEAMFITTERS FUND  
LOCAL 439, on Behalf of Themselves and  
All Others Similarly Situated,  
Plaintiffs,  
vs. Case No. 17-CV-2246  
WALGREEN CO,  
Defendant.

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VIDEO DEPOSITION OF  
DR. KENNETH SCHAFERMEYER  
Taken on behalf of the Defendant  
January 13, 2023

1 not sure it's responsive to your question. Ask me  
2 your question again.

3 Q. Do you have any basis for saying that  
4 Walgreens and Express Scripts were legally  
5 prohibited from agreeing to the language that they  
6 put into section 1.26?

7 A. So my basis for this is that there is  
8 an agreement between the payer and the PBM, in this  
9 case Express Scripts, and there's also an industry  
10 definition of usual and customary which was in  
11 effect before Walgreens contrived this scam. So  
12 the fact that Walgreens convinced Express Scripts  
13 to look the other way and they both benefit  
14 financially from it, the question is does that  
15 relieve them of their duty to provide the true  
16 usual and customary. I see they have this  
17 agreement, but this agreement doesn't meet the  
18 reasonable expectations of the payer who contracted  
19 with Express Scripts and the payer expects to  
20 receive the true usual and customary in an accurate  
21 and truthful claim. The fact that Walgreens and  
22 Express Scripts get together and make a change  
23 doesn't change the first contract between the payer  
24 and Express Scripts, that contract's still in  
25 effect. And so the reasonable expectations of the

1 payer is they would receive accurate claims in the  
2 true usual and customary.

3 Q. Have you talked to any of the payers  
4 who contracted with Express Scripts in this case to  
5 determine what they expected Express Scripts to  
6 charge them for prescriptions?

7 MR. DWOSKIN: Form.

8 A. Well, I read the complaint and I  
9 think the complaint lays out what their  
10 expectations were and I understand with a, what  
11 they would reasonably expect.

12 Q. (BY MR. ROBINSON) Did you -- let me  
13 ask again.

14 Have you talked to any of the payers  
15 who contracted with Express Scripts in this case to  
16 determine what they expected Express Scripts to  
17 charge them for prescriptions covered by their  
18 plans?

19 MR. DWOSKIN: Form.

20 A. I didn't talk with them because  
21 there's other information available and I already  
22 had an understanding what that expectation should  
23 be.

24 Q. (BY MR. ROBINSON) Besides the  
25 complaint that was drafted by the lawyers for the

1 while.

2 All right. Let's see the context.  
3 And I should have commented about the context in my  
4 report where I quoted the book in Navarro's chapter  
5 too, because the context was an important point.

6 133 you said?

7 Q. (BY MR. ROBINSON) I didn't say it  
8 but somebody on the line said it.

9 MR. DWOSKIN: Yeah, that's the  
10 footnote number. Just trying to move it along.  
11 Let's see what the record says.

12 A. Okay. I see that.

13 Q. (BY MR. ROBINSON) So you quoted,  
14 this is on page 42 of your report, you cite to the  
15 article by Dr. Mattingly and state a U.S.  
16 Pharmacist article quoting the GAO definition  
17 indicates that quote, the U&C rate is often  
18 referred to as the cash price for patients, and  
19 then you cited to the Mattingly article, correct?

20 A. That's what it says.

21 Q. Okay. And then if we look at the  
22 Mattingly article, the article is called  
23 Understanding Drug Pricing. See that?

24 A. I see that.

25 Q. Okay. Do you know Professor

1 Mattingly?

2 MR. DWOSKIN: Form.

3 A. University of Maryland? No. No, I  
4 wouldn't say I know him personally.

5 Q. (BY MR. ROBINSON) Do you know Dr.  
6 Mattingly by reputation?

7 MR. DWOSKIN: Form.

8 A. I really don't recall. No.

9 Q. (BY MR. ROBINSON) Okay. And on the  
10 second page of his article, see there's a table?

11 A. Uh-huh.

12 Q. That's entitled Common Terms and  
13 Acronyms Used In Drug Pricing?

14 A. Uh-huh.

15 Q. And then for usual and customary  
16 price it says that the definition is the average  
17 cash price paid at a retail pharmacy.

18 Is that right?

19 A. That's what it says but that's not  
20 the portion I was quoting, and he also says later  
21 on that, my point was to point out these are cash  
22 prices. I'm not agreeing that it's average. You  
23 put this in context to the article and this is  
24 where Navarro fit in too is he was saying that  
25 usual and customary is based on cash prices. In

1 other words, prices not paid by patients using  
2 insurance benefit and that illustrates my point.  
3 I'm not agreeing with this statement about average  
4 cash price, I'm just saying look, he understands  
5 the cash price, and so did the GAO, right?

6 Q. So he was, Dr. Mattingly was  
7 authoritative enough for you to quote as supporting  
8 your opinion but you would agree with me that he  
9 provides a different definition of usual and  
10 customary in 2012 than either the definition that  
11 you provided in the book chapter in 2009 or the  
12 definition in your expert report that you produced  
13 in this case.

14 MR. DWOSKIN: Form.

15 A. Okay. So I think you're  
16 misrepresenting my report. If you look at  
17 paragraph 141 (b) I talked about the GAO definition  
18 and this whole discussion has to do with the fact  
19 that PSC customers are cash customers and I'm  
20 illustrating that point. GAO defined usual and  
21 customary as the price that a person without  
22 insurance would pay. This author then refers to  
23 that GAO definition, right, and he agrees that it's  
24 the cash price. That's my point. I am not  
25 endorsing his definition that it's average price or

1 saying that he's even expert in this. I'm just say  
2 that he quoted GAO and agreed with the cash price  
3 and that was my point.

4 Q. (BY MR. ROBINSON) Look, I understand  
5 how you used Dr. Mattingly's article to support  
6 what you were saying about the GAO report, but  
7 isn't it true that Dr. Mattingly in his article  
8 which you thought was authoritative to cite for the  
9 quote you wanted, he says that the usual and  
10 customary price means the average cash price paid  
11 at a retail pharmacy, that's what he says.

12 MR. DWOSKIN: Form.

13 A. Well, again, from a historical  
14 perspective, I'm not sure how aware he was of what  
15 was going on in 2011, but historically average cash  
16 price was the cash price because there was only one  
17 cash price and so before 2007 for example or 2006  
18 that statement would have been entirely correct.  
19 I'm not sure that he was aware at that time when he  
20 wrote this that things, that people were trying to  
21 manipulate definitions. Maybe he would have been  
22 more careful, but at one point the average price  
23 was the price because there weren't multiple  
24 different prices, not until we started playing  
25 games with usual and customary.



REPORTER CERTIFICATE

I, SUZANNE BENOIST, Certified Shorthand Reporter, do hereby certify that there came before me via Zoom, the above-referenced parties, that the proceeding was translated and proofread using computer-aided transcription, and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time of said event.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Dated this 25th day of January, 2023.

A handwritten signature in black ink, appearing to read "Suzanne Benoist", is written over a horizontal line.

Ms. Suzanne Benoist, RPR,

CCR-MO, CCR-KS, CSR-IL, CSR-IA

Notary Public No. 07541281

State of Missouri - Jefferson County

My commission expires: 5/10/2024